

July 26, 2007

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Dear Mr. Boykin:

We understand you are General Counsel to the School District of Fairfield County (the “District”) and on behalf of the District, you wish to request an opinion on the following questions:

- (1) When a school district’s annual expenditures exceed the district’s approved budget, may the district allocate excess revenues from a prior year to balance the budget?
- (2) If the district is to amend its budget in the above circumstances, what is the procedure to be followed?
- (3) May a school district carry forward a budget deficit to the next fiscal year when the district has available surplus revenue that it has not appropriated for the current fiscal year?

#### **Law/Analysis**

To address your first question, we look to article X, section 7 of the South Carolina Constitution (supp. 2006). This provision deals with the limitation on the annual expenditures of state government, political subdivisions, and school districts. The portion of this provision dealing with school districts states:

- (b) Each political subdivision of the State as defined in Section 14 of this article and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall

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exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced. (1976 (59) 2217; 1977 (60) 90.)

S.C. Const. Art. X, § 7(b). As we explained in an opinion of this Office issued in 1987, article X, section 7 “requires school districts to satisfy prior year deficits in the succeeding fiscal year.” Op. S.C. Atty. Gen., November 23, 1987. In other words, this provision “requires that school districts maintain balanced budgets and that deficits be satisfied in the succeeding fiscal year.” Id.

In another opinion of this Office issued in 2003, we considered the nature of surplus funds attributable to school districts. Op. S.C. Atty. Gen., April 8, 2003. In that opinion, we determined “surplus finds can be considered a revenue source” for purposes of article X, section 7(b). Id. Furthermore, we noted “the funds at the beginning of the fiscal year . . . should be included in any determination of whether a deficiency exists at year end.” Id. Accordingly, based on article X, section 7(b) and these principles, we believe the District may allocate excess revenues from a prior year in order to balance the budget in the current year. However, we qualify this statement with the caveat that this is true presuming the District has authority to allocate surplus funds.

Who has the authority to spend or make determinations with regard to surplus funds collected for the purpose of funding school districts depends upon who has the authority to set the school district’s budget, levy taxes, and collect other funds to maintain its operations. In a prior opinion of this Office, we considered whether the Horry County School District had the authority to spend surplus school funds without the approval of the Horry County Legislative Delegation. Op. S.C. Atty. Gen., November 6, 1985. We reviewed the school district’s enabling legislation and found the Horry County Legislative Delegation has the authority to determine and levy the millage necessary for school purposes. Id. Thus, we concluded the Legislature gave the delegation the authority “to weigh potential revenue sources and expenditures such as the availability or expenditure of the surplus money.” Id. Accordingly, the Horry County Legislative Delegation, not the Horry County School District, has the authority to spend surplus school funds. Id.

In our review of the enabling legislation for the District, we found the District’s board of trustees is “authorized and empowered . . . to determine and fix the amount of levy needed to operate schools in the district . . .” 2002 S.C. acts 4078. However, the enabling legislation also requires the approval of the Fairfield County Council (“County Council”) for increases in “millage in excess of three mills above that levied for the previous year or increases in excess of the consumer price index

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for the previous year, whichever is less . . . .” Id. Despite the limited oversight afforded to County Council, it appears from the enabling legislation that the District has primary authority to levy the millage necessary to support its operations. Therefore, we believe the District has the authority to allocate excess funds from a prior year in order to remedy a current year deficit.

In your second question, assuming the District may allocate a prior year surplus to balance its budget, you ask what the procedure is to be followed. As noted above, the District’s enabling legislation requires County Council approval when the millage rate exceeds a certain level. However, the decision to allocate a prior year surplus in order to balance the budget does not appear to require County Council approval. Thus, because the decision to allocate a prior year surplus to a current year appears within the control of the District, we suggest the District follow its own budgetary procedures in making this allocation.

Lastly, you inquire as to whether the District may carry forward a budget deficit to the next fiscal year when surplus funds from a prior year are available. In addressing your first question, we determined article X, section 7(b) requires school districts to maintain a balanced budget. Thus, if a school district’s expenditures exceed its income, this constitutional provision requires the school district to “provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year.” S.C. Const. art. X, § 7(b) (emphasis added). In accordance with our 2003 opinion, we believe the other sources of income referred to in this provision includes surplus funds, which should be taken into account in determining whether revenues in a current year are sufficient to maintain a balanced budget. Op. S.C. Atty. Gen., April 8, 2003. While article X, section 7(b) does not specifically state that a school district must apply any prior year budget surplus to correct a current year deficit, we are of the opinion that the budget surplus is considered in determining whether a deficit exists. Thus, in our opinion any surplus available would be applied prior to the use of other measures to balance a school district’s budget. According to this analysis, the District would not be eligible to carry forward a deficit to the next year if the budget surplus is sufficient to cover the deficit because the surplus is applied in determining whether a deficit exists. Furthermore, we also note that regardless of whether a surplus exists, article X, section 7(b) prevents a school district from carrying a deficit forward without providing a specific means by which that deficit will be corrected in succeeding year.

### **Conclusion**

Based on our analysis above, we believe the District has the ability through its budgetary authority given by the Legislature to allocate a budget surplus from a prior year to fund a budget deficit in the current year. As for the procedures to be followed, we suggest the District look to its established budgetary procedures, as we do not believe approval from County Council is required. Lastly, article X, section 7(b) requires school districts to maintain a balanced budget. While this

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provision does not specifically mandate the application a budget surplus from a prior year be used to satisfy a deficit, we are of the understanding that a prior year surplus is accounted for in determining whether a deficit exists. Therefore, if the District has a prior year surplus it would be taken into account and used to reduce a current year deficit.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General